



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/214,840	01/13/1999	KLAUS-DIETER HAMMER	051009/0114	8132

7590

11/19/2002

FOLEY & LARDNER
3000 K STREET NW SUITE 500
PO BOX 25696
WASHINGTON, DC 200078696

EXAMINER

HON, SOW FUN

ART UNIT	PAPER NUMBER
----------	--------------

1772

DATE MAILED: 11/19/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/214,840

HAMMER ET AL.

Examiner

Sow-Fun Hon

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-11 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,9-11,13,21-23 is/are rejected.
- 7) ☒ Claim(s) 2,4,5 and 14-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Art Unit: 1772

DETAILED ACTION

Response to Amendment

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejections Withdrawn

2. The 35 U.S.C. 112, 2nd paragraph rejections in Paper # 13 (mailed 06/05/02) have been withdrawn due to Applicant's amendment in Paper # 14 (filed 09/05/02).
3. The 35 U.S.C. 103(a) rejections in Paper # 13 (mailed 06/05/02) have been withdrawn due to Applicant's amendment in Paper # 14 (filed 09/05/02).

New Rejections

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 22-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant is respectfully requested to indicate where the support is in the disclosure for the limitation of "uniform adherence to fillings during frying" in

Art Unit: 1772

claim 22, and the limitation of “can be peeled away from a filling without destroying the casing” in claim 23.

6. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the claim limitation of “uniform adherence to fillings during frying” means in terms of a finite cling force under frying conditions. For the purposes of examination, it will be interpreted as any filled foodstuff casing.

7. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the claim limitation of “can be peeled away from a filling without destroying the casing” means in terms of the extent of damage to the casing. For the purposes of examination, it will be interpreted as any filled foodstuff casing.

Claim Rejections - 35 USC § 102

8. Claims 6,9-11,13,21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammer et al. (US 5,736,179).

Hammer et al. has a cellulose-based tubular foodstuffs casing (abstract) wherein the casing is of cellulose hydrate and is fiber-reinforced. The casings have good peelability up to the end of the maturation period (column 3, lines 35-65). Hammer et al. teaches that the foodstuff (sausage) is mold-matured, and that the casing surface is treated with cellulase (cellulytic enzymes), yielding a weight loss (column 5, lines 5-15). A release preparation (oil emulsion) is

Art Unit: 1772

added to prevent adhesion or sticking together for storage of the rolls of tubular casings before stuffing (column 3, lines 5-10).

Applicant is reminded that even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). In the absence of clear comparative data, it is the examiner's position that the foodstuffs casing of Hammer et al. is the same as that of Applicant's regardless of the cellulase process limitations since Hammer et al. teaches the mold-maturation process which generates the cellulase process.

In claim 22, the cling properties of the foodstuff casing during process limitation of "during frying" are considered the same as those of the filled foodstuff casing of Hammer et al. in the absence of clear comparative data, or of further defining limitations describing the composition of the filled foodstuff casing itself.

In claim 23, the peel properties of the foodstuff casing are considered the same as those of the foodstuffs casing of Hammer et al. in the absence of clear comparative data, or of further defining limitations describing the composition of the filled foodstuff casing itself.

In addition, in claim 6, the term "based on cellulose hydrate" is being interpreted as an open-ended limitation which includes other components in the foodstuff casing, and the presence of, or absence of, other components in the casing.

Claim Rejections - 35 USC § 103

9. Claims 1,3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hammer et al. ('179).

Hammer et al. has been discussed above and teaches that the foodstuffs casing is treated on the surface with cellulase but fails to teach permanent inactivation of the cellulase. However, it would have been obvious to one of ordinary skill in the art that the cooking via frying or boiling of the filled foodstuffs casing would permanently inactivate the cellulase (an enzyme secreted by mold during mold maturation of the sausage), and that the temperature would rise above 70°C during the cooking.

Allowable Subject Matter

10. Claims 2, 4-5, 14-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 1772

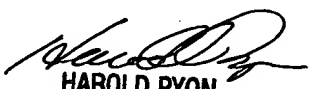
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703)308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

SH
11/15/02


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/18/02